

On December 15, 1993 appellant, then a 53-year-old carpenter, filed an occupational disease claim alleging that on December 3, 1992 she became aware of her contact dermatitis/erythema and scab. She also alleged that on November 23, 1993 she became aware that her conditions were due to tearing down old metal shelves that contained unknown chemicals which leaked from containers on the shelves. By letter dated June 10, 1994, the Office accepted appellant's claim for contact dermatitis of both hands. The Office later

expanded the acceptance of appellant's claim to include aggravation of bilateral hand osteoarthritis and a recurrence of disability she sustained in June 1998 causally related to her December 3, 1992 employment injury.¹

On June 23, 2004 appellant filed a claim alleging that she sustained a recurrence of disability. She also filed a claim for a schedule award (Form CA-7). In support of her claims, appellant submitted employment records including a description of her carpenter position, a letter from the Office of Personnel Management approving her application for retirement and a June 29, 2004 letter in which she requested a schedule award. She also submitted a narrative statement in which she described her duties as a carpenter and noted that she experienced repetitive employment-related injuries which included erosive inflammatory osteoarthritis and contact dermatitis of both hands and an industrial hand injury. She described the symptoms she experienced in her fingers and joints and attributed her conditions to her duties as a carpenter. She described how she sustained the employment-related contact dermatitis and her symptoms. Appellant submitted medical records regarding her skin conditions and osteoarthritis of both hands and medical treatment.

By letter dated August 16, 2004, the Office referred appellant together with a statement of accepted facts, a list of questions to be addressed and the case record to Dr. Lewis Tanenbaum, a Board-certified dermatologist, for a second opinion medical examination.

Dr. Tanenbaum submitted an August 26, 2004 medical report in which he noted a review of appellant's medical records and the statement of accepted facts. He provided a history of the December 31, 1992 employment injury. He stated that the records of Dr. Nikolajs A. Lapins, a Board-certified dermatologist and Office referral physician, confirmed that appellant had chronic bilateral eczematous dermatitis of the hands. He noted symptoms associated with appellant's hands. Dr. Tanenbaum opined that the initial injury was most probably an irritant contact dermatitis due to chemicals which resulted in a chronic eczematous dermatitis subject to recurrences. He opined that appellant sustained a recurrence and that she was permanently partially disabled. Dr. Tanenbaum stated that the disability was confined to the dermatitis of the hands and, for this reason, appellant was not able to work in an environment that required handling chemicals, wearing gloves or being exposed to caustic agents of any type.

By letter dated September 21, 2004, the Office accepted appellant's June 23, 2004 recurrence of disability. The Office advised her that a follow-up questionnaire would be submitted to Dr. Tanenbaum for completion in order to determine whether she had any permanent impairment of her hands. The Office noted that an Office medical adviser would review this information and to determine the percentage of loss of her hands. The Office advised that, if appellant's treating physician had authored a report regarding the permanent loss of use of her hands, she should submit it for review.

Appellant submitted an October 31, 2004 medical report of Dr. Janice Murota, an internist, who provided findings on physical and x-ray examination. Dr. Murota diagnosed bilateral erosive osteoarthritis and tendinitis in both hands that was related to repetitive strain of

¹ Appellant was terminated from the employing establishment due to a reduction-in-force on October 1, 1997. She received disability retirement benefits.

an old industrial injury appellant sustained while working as a carpenter. She opined that appellant could no longer perform her work and noted the difficulty she experienced with performing housework.

Appellant also submitted a January 15, 1998 medical report from Dr. Harry R. Walker, a Board-certified orthopedic surgeon, who reviewed appellant's case file and agreed that she suffered from repetitive motion hand injuries, erosive osteoarthritis and an industrial injury of the left hand/wrist in April 1989. Dr. Walker stated that medical documentation from Dr. Carl Gak, an internist, verified that appellant had never been treated for osteoarthritis of the hands prior to her employment as a carpenter in 1989. He noted the results of x-rays taken in December 1997 and reported findings on physical examination. Dr. Walker concluded that appellant would need to be treated conservatively with medication and possibly physical therapy and that her prognosis was poor as her condition would worsen over time.

In an addendum report of the same date, Dr. Walker addressed appellant's disability. He stated that, in April 1989, she sustained work-related erosive osteoarthritis, a repetitive motion hand injury and a left hand/wrist injury based on a December 1997 x-ray and medical evaluation. He further stated that it was not expected that appellant's condition would resolve. Dr. Walker described her symptoms and stated that she did not have any preexisting osteoarthritis of the hands. He noted that appellant would need to be treated conservatively with medications and possibly physical therapy from time to time and that her prognosis was poor. Dr. Walker stated that appellant would never be able to return to any type of carpentry work, manual labor or repetitive use of her hand.

On December 13, 2004 an Office medical adviser reviewed the case record. She stated that, since appellant had intermittent symptoms and was normal at other times, there was no ratable impairment under the Federal Employees' Compensation Act. The Office medical adviser further noted that the schedule award tables for the upper extremities did not provide any criteria for rating impairment of the skin. The Office medical adviser noted that there was no sensory, motor or strength loss in the upper extremities.

In a December 14, 2004 decision, the Office denied appellant's claim for a schedule award. The Office found that neither the Act nor the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001) provided for the payment of a schedule award for the employment-related skin condition of contact dermatitis to the hands.

LEGAL PRECEDENT

The schedule award provision of the Act² and its implementing regulation³ sets forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of

² 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

³ 20 C.F.R. § 10.404.

compensation is paid in proportion to the percentage of loss of use.⁴ However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office adopted the A.M.A., *Guides* as a standard for determining the percentage of impairment and the Board has concurred in such adoption.⁵

No schedule award is payable for a member, function or organ of the body not specified under section 8107(c) of the Act or section 10.404(a) of the implementing federal regulations.⁶ The Act identifies members such as the arm, leg, hand, foot, thumb and finger, functions such as loss of hearing and loss of vision and organs to include the eye. Section 8107(c)(22) of the Act provides for the payment of compensation for permanent loss of any other important external or internal organ of the body as determined by the Secretary [of Labor].⁷ The Secretary of Labor made such a determination and, pursuant to the authority granted under section 8107(c)(22), added the breast, kidney, larynx, lung, penis, testicle, ovary, uterus and tongue to the schedule.⁸

While there is no statutory or regulatory authority for the payment of a schedule award for impairment to the skin, a claimant may receive a schedule award for permanent impairment to a scheduled member of the body regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member.⁹

ANALYSIS

The Office accepted that appellant sustained an employment-related skin condition of contact dermatitis and aggravation of osteoarthritis in both hands. Dr. Tanenbaum, an Office referral physician, found that appellant sustained a recurrence of disability of her employment-related contact dermatitis condition and that she was permanently partially disabled. Although the Office accepted that appellant sustained an employment-related skin disorder, there is no provision, under the Act, in the statutory or regulatory language denoting covered members, organs and functions, for granting schedule awards for only a skin condition.¹⁰ Therefore, appellant is not entitled to a schedule award for her accepted contact dermatitis of both hands. The Board notes that an Office medical adviser, who reviewed the case record, properly stated

⁴ 5 U.S.C. § 8107(c)(19).

⁵ 20 C.F.R. § 10.404; *Donald E. Stockstad*, 53 ECAB 301 (2002); *petition for recon. granted (modifying prior decision)*, Docket 01-1570 (issued August 13, 2002).

⁶ See *Robert Romano*, 53 ECAB 649 (2002).

⁷ 5 U.S.C. § 8107(c)(22).

⁸ 20 C.F.R. § 10.404; *Henry B. Floyd, III*, 52 ECAB 220 (2001).

⁹ A claimant may thus be entitled to a schedule award for permanent impairment to an upper or lower extremity even though the cause of the impairment originated in the spine, which is a nonscheduled member. *Rozella L. Skinner*, 37 ECAB 398 (1986).

¹⁰ See 5 U.S.C. § 8107(c); 20 C.F.R. § 10.304(b).

that the tables of the A.M.A., *Guides* for the upper extremities do not provide any criteria for rating impairment of the skin. (R 267)

With regard to appellant's accepted aggravation of osteoarthritis in both hands, the Board finds, however, that the record in the present case has not been sufficiently developed so as to enable a proper determination of the degree of impairment. Dr. Walker, appellant's attending Board-certified orthopedic surgeon, found in his 1998 medical reports that she sustained repetitive motion hand injuries, erosive osteoarthritis and an April 1989 employment-related left hand/wrist injury. He noted that she had not been treated for osteoarthritis of the hands prior to working as a carpenter in 1989. Dr. Walker opined that appellant was unable to perform the duties of a carpenter and that her prognosis was poor as her condition would worsen over time. He explained that she had symptoms of pain and limited range of motion, diminished grip and deformities of both hands. The Board finds that Dr. Walker's reports are of diminished probative value as he did not address whether appellant sustained any permanent impairment of her upper extremities due to her employment-related aggravated osteoarthritis based on the appropriate tables of the A.M.A., *Guides*.

An Office medical adviser reviewed the case record and found that since appellant had intermittent symptoms and was normal at other times, there was no ratable impairment for the skin under the Act. She explained that, in this case, there was no sensory, motor or strength loss in appellant's upper extremities. The Office medical adviser did not discuss whether appellant was entitled to a schedule award for her accepted work-related aggravated osteoarthritis. The Board, therefore, finds that the medical evidence is not sufficiently developed as to whether appellant is entitled to a schedule award for her employment-related aggravated osteoarthritis of both hands.

Accordingly, this case is remanded to the Office for further consideration. On remand the Office shall refer this case to a second opinion physician to provide a complete evaluation of appellant's impairment under the A.M.A., *Guides*. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in this case.

CONCLUSION

The Board finds that appellant is not entitled to a schedule award for her accepted contact dermatitis of both hands. The Board, however, finds that the case is not in posture for decision as to whether she is entitled to a schedule award for her accepted employment-related aggravation of osteoarthritis of both hands.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2004 decision of the Office of Workers' Compensation Programs is affirmed in part regarding the denial of a schedule award for employment-related contact dermatitis and remanded in part for further development regarding entitlement to a schedule award for aggravated osteoarthritis.

Issued: February 17, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board